IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 11318 of 2002(V)

PETITIONER:
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1. SASIKUMAR, KOCHUKARIYIL HOUSE,
KOKKOTHAMANGALAM, CHERTHALA.

2. K.MADHAVAN, PATTASSERIL HOUSE,
KRISHNAPURAM VILLAGE, KARTHIKAPPALLY.

BY ADV. SRI.SEBASTIAN DAVIS

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY TO GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT,
REVENUE (S) DEPARTMENT, THIRUVANANTHAPURAM.

3. SECRETARY TO GOVERNMENT,
TAXES (A) DEPARTMENT, THIRUVANANTHAPURAM.

4. THE COMMISSIONER OF EXCISE, KOTTAYAM.

5. THE ASSISTANT EXCISE COMMISSIONER,
KOTTAYAM.

6. THE TAHSILDAR, TALUK OFFICE, CHERTHALA.

7. THE TAHSILDAR, TALUK OFFICE,
KARTHIKAPPALLY.

BY G.P. SMITHA SUKUMARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON 22/11/2007 DELIVERED THE FOLLOWING:

ORDER ON CMP NOS.19788/2002 & 10404/2003 IN OP NO.11318/2002

DISMISSED:

22.11.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE PHOTOCOPY OF THE AGREEMENT DT.NIL EXECUTED BY PETITIONERS TO THE GOVERNOR OF KERALA.

P2: TRUE PHOTOCOPY OF RDER DT.29.9.94 PASSED BY R5.

P3: TRUE PHOTOCOPY OF CERTIFICATE DT.20.10.2000 ISSUED BY THE EXCISE INSPECTOR ERATTUPETTA.

P4: TRUE PHOTOCOPY OF THE PETITION DT.21.8.2000 SUBMITTED BY THE PETITIONERS BEFORE THE MINISTER OF FINANCE AND EXCISE.

P5: TRUE PHOTOCOPY OF THE PETITION DT.23.10.2000 SUBMITTED BY PETITIONERS BEFORE THE MINISTER FOR REVENUE.

P6: TRUE PHOTOCOPY OF THE PETITION DT.12.9.2001 .DO.

P7: TRUE PHOTOCOPY OF THE ORDER DT.21.12.2001 PASSED BY R2.

P8: TRUE PHOTOCOPY OF ATTACHMENT ORDER DT.14.3.2002 PASSED BY R6.

P9: TRUE PHOTOCOPY OF SALE NOTICE DT.22.3.2002 ISSUED BY R7.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.11318 of 2002

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Dated this the 22nd day of November, 2007.

JUDGMENT

Heard counsel for the petitioners and the Government Pleader. The petitioners were licencees for sale of arrack in arrack shop Nos.79 to 94 in Erattupetta Range during the financial year 1994-95. Under the terms of grant of licence, the kist payable by the petitioners was Rs.10,50,000/-. However, on account of delay in granting licence, the kist amount was reduced to Rs.9,77,948/-. The petitioners admittedly had paid Rs.5,29,841/- towards kist and duty as on 1.5.1995. However, on account of strike, petitioners closed the business in August 1994. The licence was cancelled on 29.9.1994 vide Ext.P2 proceedings issued by the Excise authorities. The shops were thereafter run under the departmental management. During this period the admitted amount of kist collected was Rs.4,97,721/- and duty collected was Rs.1,41,000/- totaling Rs.6,38,721/-. Revenue recovery proceedings were initiated against the petitioners for recovery of arrears against which petitioners have filed this O.P. in 2002.

2. In view of the contention of the petitioner based on Division Bench judgment of this court that kist and duty collected during period of

departmental management should be set off against liability of the licencee whose licence was cancelled, this court vide order dated 14.2.2006 directed the Assistant Commissioner of Excise to file a detailed statement of liability. The additional statement is filed in this court on 20.9.2007. Counsel for the petitioner referring to the statement submitted that demand of interest running into several lakhs of rupees is absolutely arbitrary because interest is reckoned on entire kist payable without setting off the amount collected during departmental management period as directed by this court. I find the submission of the counsel is correct because interest is calculated on the entire kist arrears without setting off Rs.6,37,821/- being the kist and duty collected by Government during period of management by the department. Obviously the entitlement of set off is at the time of receipt during departmental management and consequently interest should have been excluded on the amount collected during departmental management period. Even though petitioners have remitted duty of Rs.86,381/- during the period they conducted business and during departmental management period duty payment was Rs.1,41,000/-, there is nothing in the statement to indicate that there is shortfall in payment of duty. Since department continued business and duty was being paid for the actual quantity lifted for the entire period of business, I do not know on what basis duty can be

demanded on the so-called quantity of rectified spirit not lifted by the petitioner after cancellation of licence. Since department was running business after cancellation and was admittedly paying duty for the quantity of rectified spirit lifted, no duty can be demanded from the petitioners for licence period after commencement of business by the department. Having regard to the fact that business was carried on during 1994-95 and O.P. itself is pending for the last 5 years, I do not think further statement should be called for in the matter for the reason that already Rs.5,29,841/- was paid by the petitioners by 1.5.1995 and thereafter the first petitioner's property was sold and an amount of Rs.4,19,600/- was recovered in recovery proceedings. Besides this, by attachment and sale of movables of the second petitioner another amount of Rs.3,600/- was recovered. In other words, total recovery from the petitioners is Rs.10,05,004/-. Besides this, under departmental management, Government has recovered Rs.6,38,721/-. In other words, the total collection by the State is Rs.16,88,772/- as against the original liability of Rs.9,77,948/- towards kist and duty payable. After setting off the actual duty paid which is something over Rs.2,27,000/-, recovery towards kist and interest is something over Rs.14 lakhs as against the kist originally fixed at below Rs.10 lakhs. Therefore, Government has no way lost in the case. In these circumstances, I do not find any

justification in continuing recovery proceedings against the petitioners, more so, when petitioners had carried on business only for 4 months and they have paid more than Rs.10 lakhs. The O.P. is accordingly allowed quashing further demands and recovery proceedings.

C.N.RAMACHANDRAN NAIR
Judge

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